



General Assembly

February Session, 2004

Raised Bill No. 5237

LCO No. 1083

01083____ENV

Referred to Committee on Environment

Introduced by:
(ENV)

***AN ACT IMPLEMENTING RECOMMENDATIONS OF THE WATER
PLANNING COUNCIL REGARDING THE CONNECTICUT WATER
DIVERSION POLICY ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-368 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) Any person or municipality maintaining a diversion prior to or
4 on July 1, 1982, shall register on or before July 1, 1983, with the
5 commissioner on a form prescribed by him the location, capacity,
6 frequency and rate of withdrawals or discharges of said diversion and
7 a description of the water use and water system. Any such diversion
8 which is not so registered may be subject to the permit requirements of
9 sections 22a-365 to 22a-378, inclusive.

10 (b) Notwithstanding any other provision of the general statutes or
11 any special act to the contrary, no person or municipality shall, after
12 July 1, 1982, commence to divert water from the waters of the state
13 without first obtaining a permit for such diversion from the
14 commissioner.

15 (c) No permit shall be transferred to another person or municipality
16 without the written approval of the commissioner.

17 (d) (1) Any person or municipality claiming or maintaining a
18 diversion registered in accordance with the provisions of this section
19 shall pay to the commissioner an annual fee of up to ten thousand
20 dollars for each diversion so registered. Not later than October 31,
21 2004, the commissioner shall cause to be published in the Connecticut
22 Law Journal a fee schedule for various classes of diversions that have
23 been registered in accordance with the provisions of this section. In no
24 event shall an annual fee be less than one thousand dollars or greater
25 than ten thousand dollars. Such annual fee shall be due and payable
26 on January thirty-first of each year. The fee required under this
27 subsection shall be deposited into the Environmental Quality Fund
28 established under section 22a-27g and shall be used by the
29 commissioner to carry out the purposes of the Connecticut Water
30 Diversion Policy Act, sections 22a-265 to 22a-380, inclusive.

31 (2) Any person or municipality may avoid payment of the annual
32 fee required pursuant to subdivision (1) of this subsection by filing a
33 form with the commissioner that certifies the person or municipality
34 claiming or maintaining such diversion no longer claims or maintains
35 such diversion. The commissioner may require that such diversion be
36 physically altered such that water can no longer be diverted from it.
37 Such person or municipality shall also certify on such form that such
38 person or municipality has never transferred such diversion to any
39 other person, municipality or other entity.

40 (3) Not later than October 31, 2004, the commissioner shall create
41 such form and send it by first class mail to all persons or municipalities
42 known to the commissioner as claiming or maintaining a diversion
43 pursuant to this section. In the event a person or municipality files
44 such form after January thirty-first of any year, the commissioner may,
45 in the commissioner's sole discretion, waive each annual fee, for a
46 single year, for each diversion identified on the form.

47 (4) In the event that a person or municipality fails to pay the annual
48 fee required by this subsection by July first of each year, such person
49 or municipality shall no longer divert water without first obtaining a
50 permit for such diversion from the commissioner pursuant to sections
51 22a-265 to 22a-380, inclusive, and any regulations adopted under
52 sections 22a-265 to 22a-380, inclusive.

53 (e) In the event the commissioner issues a permit to divert waters of
54 the state pursuant to sections 22a-265 to 22a-380, inclusive, and any
55 regulations adopted under sections 22a-265 to 22a-380, inclusive, no
56 person or municipality may claim or maintain such diversion as
57 registered pursuant to this section.

58 Sec. 2. Section 22a-368a of the general statutes is repealed and the
59 following is substituted in lieu thereof (*Effective from passage*):

60 (a) The Commissioner of Environmental Protection shall publish a
61 dated notice of (1) the availability of a form for the reporting of
62 operating data for diversions pursuant to this section, and (2) a
63 deadline for submission of such form. Such form shall be developed by
64 the Commissioner of Environmental Protection, in consultation with
65 the Commissioners of Public Health and Agriculture and the
66 chairperson of the Public Utilities Control Authority.

67 (b) Any person or municipality maintaining a diversion that was
68 registered in accordance with the provisions of section 22a-368, as
69 amended by this act, and which continues to be in use as of July 1,
70 2001, shall report to the Commissioner of Environmental Protection
71 current operating data for such diversion not later than six months
72 after the publication of notice pursuant to subsection (a) of this section.
73 Such data shall be provided on a form developed by the Commissioner
74 of Environmental Protection, in consultation with the Commissioners
75 of Public Health, Public Utility Control and Agriculture. Such data
76 shall include monthly data for the calendar years 1997 to 2001,
77 inclusive, (1) for the actual frequency and actual rate of water
78 withdrawals or discharges of such diversion if such diversion is

79 metered, or (2) that estimates the withdrawals or discharges in the
80 absence of a meter. A person or municipality maintaining a diversion
81 exclusively for agricultural purposes may report estimated water use
82 for the reporting period. The provisions of this subsection shall not
83 apply to an owner or operator of an existing electric generating facility
84 utilizing fossil fuel, provided the diversion is used to comply with
85 state and federal environmental laws, and further provided such
86 owner or operator reports to the Commissioner of Environmental
87 Protection an estimate of future water use necessary to comply with
88 state and federal environmental laws.

89 (c) Any person or municipality maintaining a diversion that was
90 eligible for registration in accordance with section 22a-368, as amended
91 by this act, but failed to so register, which diversion continues to be in
92 use as of July 1, 2001, shall report to the commissioner the operating
93 data for such diversion not later than six months after the publication
94 of notice pursuant to subsection (a) of this section. Such data shall be
95 provided on a form developed by the Commissioner of Environmental
96 Protection, in consultation with the Commissioners of Public Health,
97 Public Utility Control and Agriculture. Such data shall include (1) the
98 location, capacity, frequency and rate of withdrawals or discharges of
99 such diversion as of July 1, 1982, (2) a description of the water use and
100 water system on or before July 1, 1982, including information to
101 evidence its operation at that time, and (3) the monthly data for the
102 calendar years 1997 to 2001, inclusive, (A) for the actual frequency and
103 actual rate of water withdrawals or discharges of such diversion if
104 such diversion is metered, or (B) that estimates the withdrawals or
105 discharges in the absence of a meter. A person or municipality
106 maintaining a diversion exclusively for agricultural purposes may
107 report estimated water use for the reporting period in subdivision (3)
108 of this subsection.

109 (d) Any person or municipality maintaining a diversion that was
110 not eligible for registration in accordance with section 22a-368, as
111 amended by this act, and is not currently authorized by permit issued

112 by the commissioner pursuant to said section, which diversion is in
113 use as of July 1, 2001, shall report to the Commissioner of
114 Environmental Protection operating data for the diversion not later
115 than six months after the publication of notice pursuant to subsection
116 (a) of this section. Such data shall be provided on a form developed by
117 the Commissioner of Environmental Protection, in consultation with
118 the Commissioners of Public Health, Public Utility Control and
119 Agriculture. Such data shall include (1) information as to when the
120 diversion was initiated, (2) a description of the water use and water
121 system operation, and (3) the monthly data for the calendar years 1997
122 to 2001, inclusive, (A) for the location, capacity, actual frequency and
123 actual rate of water withdrawals or discharges of said diversion if such
124 diversion is metered, or (B) that estimates the withdrawals or
125 discharges in the absence of a meter. A person or municipality
126 maintaining a diversion used exclusively for agricultural purposes
127 may report estimated water use for the reporting period in subdivision
128 (3) of this subsection.

129 (e) Information reported by a person or municipality for the
130 purposes of subsection (c) or (d) of this section shall not be used by the
131 Commissioner of Environmental Protection to order the payment of
132 civil penalties pursuant to section 22a-6b and subsection (b) of section
133 22a-376 provided the person or municipality has filed a permit
134 application pursuant to section 22a-368, as amended by this act, on or
135 before July 1, 2003. This subsection shall not apply to any information
136 the commissioner can document independent of a submission
137 pursuant to this section. Failure to report the information required in
138 this section may result in civil penalties in accordance with section 22a-
139 6b and subsection (b) of section 22a-376.

140 (f) Any person or municipality that was required to report
141 operating data pursuant to this section, but failed to report such data
142 by February 23, 2003, shall not divert water without obtaining a permit
143 from the commissioner for such diversion pursuant to sections 22a-265
144 to 22a-380, inclusive, and any regulations adopted under sections 22a-

145 265 to 22a-380, inclusive.

146 (g) (1) Any person or municipality maintaining a diversion that was
147 registered in accordance with the provisions of section 22a-368, as
148 amended by this act, shall install and maintain a totalizing flow meter
149 to measure the total amount of water withdrawn from each such
150 diversion and shall continuously operate and maintain such meter and
151 shall maintain a daily log of water diverted, hours of operation and
152 configuration of the diversion. In the event of a totalizing flow meter
153 malfunction or breakage, each such person or municipality shall repair
154 or replace the malfunctioning or broken meter not later than seventy-
155 two hours after such malfunction or breakage. Each such meter shall
156 be secured in a manner that ensures such person or municipality
157 controls access to the meter.

158 (2) In the event that any person or municipality maintaining a
159 diversion that was registered in accordance with the provisions of
160 section 22a-368, as amended by this act, can demonstrate to the
161 commissioner's satisfaction that metering of such diversion by use of a
162 totalizing flow meter is not practicable, such person or municipality
163 may request that the commissioner issue an alternative monitoring
164 protocol for a class of diversions. If the commissioner issues such an
165 alternative monitoring protocol for a class of diversions, compliance
166 with the requirements of such protocol shall be deemed equivalent to
167 use of totalizing flow meter required pursuant to subdivision (1) of this
168 subsection.

169 (3) If any person or municipality maintaining a diversion that was
170 registered in accordance with the provisions of section 22a-368, as
171 amended by this act, demonstrates to the commissioner's satisfaction
172 that metering of such diversion by use of a totalizing flow meter or by
173 use of an alternative monitoring protocol for a class of diversions is not
174 practicable, such person or municipality may request that the
175 commissioner approve an alternative monitoring protocol for an
176 individual diversion. Compliance with the requirements of such

177 protocol shall be deemed equivalent to the use of a totalizing flow
178 meter required pursuant to subdivision (1) of this subsection.

179 (4) If any person or municipality claiming or maintaining a
180 diversion that was registered in accordance with the provisions of
181 section 22a-368, as amended by this act, has provided the
182 commissioner a written request for an alternative monitoring protocol
183 for an individual diversion by October 31, 2004, the commissioner may
184 not find such person or municipality in violation of this section until
185 not less than sixty days after the commissioner approves or denies
186 such alternative monitoring protocol for an individual diversion.

187 (5) In the event that any person or municipality claims an
188 exemption from the obligation to obtain a permit under sections 22a-
189 265 to 22a-380, inclusive, and any regulations adopted under sections
190 22a-265 to 22a-380, inclusive, the commissioner may issue an order
191 requiring that such person or municipality install and maintain a
192 totalizing flow meter. Such order may also describe the type and
193 frequency of metering, monitoring, record keeping, calibration and
194 reporting requirements.

195 (h) Any person or municipality maintaining a diversion that was
196 registered in accordance with the provisions of section 22a-368, as
197 amended by this act, shall test and calibrate each totalizing flow meter
198 maintained pursuant to subsection (g) of this section every three years
199 or as set forth in an alternative monitoring protocol. Each such
200 totalizing flow meter shall be calibrated for accuracy by a post-
201 calibration test to the following percentages:

202 (1) Within five per cent accuracy for less than two hundred fifty
203 thousand gallons per minute maximum rated capacity;

204 (2) Within three per cent accuracy for between two hundred fifty
205 thousand and one million gallons per minute maximum rated
206 capacity;

207 (3) Within one per cent accuracy for greater than one million gallons
208 per minute maximum rated capacity.

209 (i) (1) Any person or municipality claiming or maintaining a
210 diversion that was registered in accordance with the provisions of
211 section 22a-368, as amended by this act, shall provide an annual report
212 to the Commissioner of Environmental Protection. Such annual report
213 shall be provided to the commissioner not later than January thirty-
214 first of each year. The annual report may be provided on forms
215 provided by the commissioner, but each annual report shall, at a
216 minimum, contain the following information: (A) The name and
217 address of the person or municipality claiming or maintaining the
218 diversion, (B) the name and number of each diversion as previously
219 identified by the commissioner, (C) the total amount of water diverted
220 during the prior calendar year, expressed in gallons per day for each
221 diversion, or expressed in another measure acceptable to the
222 commissioner, (D) a description of the method used to measure the
223 diversion, (E) the results of any post-calibration test performed, and (F)
224 the dates and duration of any meter breakage or malfunction.

225 (2) In the event that any person or municipality fails to file the
226 annual report required by subdivision (1) of this subsection by July
227 first of any year, such person or municipality shall no longer divert
228 water without first obtaining a permit for such diversion pursuant to
229 sections 22a-265 to 22a-380, inclusive, and any regulations adopted
230 under sections 22a-265 to 22a-380, inclusive. If an annual report does
231 not comply with the provisions of this subsection, the commissioner
232 may reject such annual report. The commissioner shall provide written
233 notification to any person or municipality filing the deficient annual
234 report, detailing the reasons for such rejection. Failure to provide an
235 acceptable annual report before thirty days after receipt of such written
236 notification from the commissioner may be considered by the
237 commissioner as failure to provide an annual report.

238 **Statement of Purpose:**

239 To implement Water Planning Council suggested changes to the
240 Connecticut Water Diversion Policy Act.

241

242 *[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline,*
243 *except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is*
244 *not underlined.]*

245

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>from passage</i>